

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD WAYNE WRIGHT, SR.,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 2:05cv439-A
)	
SYLVESTER NETTLES, et al.,)	
)	
Defendants.)	

ORDER

This cause is now before the court on Plaintiff's Notice of Appeal (Doc. #36), filed on September 15, 2005, which the court is treating as a motion to proceed on appeal *in forma pauperis*.

28 U.S.C. § 1915(a) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam) *cert. denied*, 454 U.S. 903, 102 S.Ct. 411 (1981); *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam), *cert. denied*, 457 U.S. 1122, 102 S.Ct. 2938 (1982); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010, 102 S.Ct. 2303 (1982). Applying this standard, this court is of the opinion, for the reason that the Order of this court entered on August 31, 2005, which the Plaintiff seeks to appeal is not a final appealable order, that the Plaintiff's appeal is without a legal or factual basis and, accordingly, is frivolous

and not taken in good faith. *See, e.g., Rudolph v. Allen, supra; Brown v. Pena*, 441 F.Supp. 1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED that the Plaintiff's motion to proceed on appeal *in forma pauperis* is hereby DENIED, and that the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 20th day of September, 2005.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE